THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14772 OF 2007

ORAL ORDER:

The petitioner claims to be the owner and possessor of certain house plots situated in Dhanapur, Bahudurguda Village, Saroornagar, Rangareddy District within the limits of LB Nagar Municipality, having purchased them from the 1st respondent herein under Sale Deeds dated 12-5-2004 and 12-3-2004. It is stated that since the 1st respondent failed to get the sale deeds registered, the petitioner was constrained to file O.S.No.499 of 2007 and O.S.No.546 of 2007 in the Court of the 1st Additional Senior Civil Judge, R.R. District at LB Nagar, which are pending and the interim orders directing the parties to maintain *status quo* are in operation.

While so, the possession notice dated 28-6-2007 under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") issued by the 2nd respondent-Bank was affixed to the property in question calling upon the 1st respondent to hand over vacant possession of the plots to the 2nd respondent-Bank by 30-06-2007. Aggrieved by the same, the present writ petition is filed contending *inter alia* that since the matter is *sub judice* before the Court of the 1st Additional Senior Civil Judge, the 2nd respondent is not entitled to proceed against the property in question particularly without notice to the petitioner.

I have heard the learned Counsel for the petitioner and perused the material on record.

A perusal of the impugned possession notice dated 28-6-2007 shows that the vendor of the petitioner – 1st respondent herein – availed financial assistance from the 2nd respondent-Bank by mortgaging the property in question as security. The impugned notice also shows that a sum of Rs.16,59,855/- is due from the 1st respondent

and he failed to respond to the demand notice dated 23-2-2007 issued under Section 13 (2) of the Act. In the circumstances, the impugned notice was issued under Section 13 (4) of the Act calling upon the borrower/guarantors of the property to deliver physical possession on or before 30-6-2007, failing which the 2nd respondent would be compelled to take the physical possession of the property in exercise of the powers conferred under the provisions of the Act.

Even assuming that the petitioner had purchased the property in question from the 1st respondent and that the suits for specific performance are pending in the Civil Court between the petitioner and the 1st respondent, in view of the overriding affect given to the provisions of Securitisation Act, the same cannot be a bar to enforce the security interest following the procedure prescribed under the provisions of the Act for recovery of the amounts due from the 1st respondent.

At any rate, in case the petitioner is aggrieved by the steps taken by the 2nd respondent on any ground whatsoever, it is always open to her to make an appropriate application under Section 17 of the Act to the Debts Recovery Tribunal having jurisdiction, in which event, the Tribunal after making necessary enquiry would pass appropriate orders in accordance with law. In the light of the said efficacious alternative remedy available under the Act, the petitioner cannot straightaway invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Accordingly, without expressing any opinion on merits, the Writ Petition is disposed of granting leave and liberty to the petitioner to work out the remedy under Section 17 of the Act. However, in view of the plea of the petitioner that the property in question has been leased out for running an educational institution, there shall be a direction to the respondents not to take physical possession of the property in question for a period of four weeks from today. No costs.

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G. ROHINI, J.

12th July, 2007.

Note: Issue CC in one week.

(By)

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14772 OF 2007

12th July, 2007

Between:

Kovela Rupa. ... Petitioner.

And

P.Y. Kondala Rao and another. .. Respondents.